

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

Geographic Partitioning and Spectrum )  
Disaggregation by 900 MHz )  
Specialized Mobile Radio Service )  
Major Trading Area Licensees )

Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency Band )

RM-8887

PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

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To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group (RTG), by its attorneys, hereby respectfully submits these Comments in response to the above-captioned Petition for Rulemaking ("AMTA Petition"), filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on September 30, 1996. These Comments focus on the proposal to extend the ability to partition specialized mobile radio ("SMR") services licenses to entities other than rural telephone companies, as presented in the AMTA Petition.

**I. STATEMENT OF INTEREST**

RTG is a coalition of small telephone companies serving rural America. RTG supports the efforts of all rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and under-served parts of the country. RTG is participating in this rulemaking to ensure that the Commission is apprised of the potentially detrimental effects that would ensue from the

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adoption of AMTA's proposal to permit 900 MHz SMR licensees to freely partition their Major Trading Area ("MTA") licenses with any willing entity.<sup>1</sup> Adoption of the proposal will decrease rural telephone companies' presence in the SMR market and hinder the delivery of SMR services to rural America. Accordingly, RTG has a significant interest in the outcome of this proceeding.

## II. DISCUSSION

### A. **AMTA's Partitioning Proposal Contravenes Sections 309(j)(3)(A) and (B) of the Communications Act of 1934, as amended, and Should Be Rejected.**

#### 1. **Adoption of AMTA's partitioning proposal would hinder the rapid delivery of SMR service to the rural public.**

Section 309(j)(3)(A) of the Communications Act of 1934, as amended ("Communications Act"), states that the Commission is charged with promoting "the development and rapid deployment of new technologies, products, and services for the benefit of the public, **including those residing in rural areas**, without administrative or judicial delays."<sup>2</sup> To implement this directive, the Commission adopted its original partitioning arrangement, which gave rural telephone companies the exclusive right to license geographic segments of SMR licensees' MTAs that covered rural telephone companies' telephone

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<sup>1</sup> The AMTA proposal is modeled after the Commission's proposal to expand partitioning rights in *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees — Implementation of Section 257 of the Communications Act — Elimination of Market Entry Barriers, Notice of Proposed Rulemaking*, WT Docket No. 96-148, GN Docket No. 96-113 (released July 15, 1996) ("*Partitioning NPRM*"). RTG fully participated in that proceeding and views AMTA's proposal as a further attempt to erode the designated entity status awarded to rural telephone companies.

<sup>2</sup> 47 U.S.C. § 309(j)(3)(A) (emphasis added).

service areas.<sup>3</sup> The Commission established the partitioning scheme based on its recognition that existing infrastructure makes rural telephone companies well-suited to introduce 900 MHz SMR services rapidly into their service areas, which are less profitable to serve for companies without existing infrastructure than more densely populated urban areas.<sup>4</sup>

By proposing to eliminate this exclusive arrangement between rural telephone companies and SMR MTA licensees, AMTA is opening the door for less-qualified entities to undertake the responsibility of ensuring that the rural areas of the country receive quality, innovative SMR services in a timely manner. A small business may be able to strike a better deal with an SMR licensee to acquire a partitioned license, but such an arrangement offers less guarantee to the rural public that delivery of service will be rapid, or even reach them at all. It is a well-recognized fact that rural telephone companies clearly have an advantage in speeding new services to their customers by virtue of their existing wireline infrastructure (e.g., poles, towers, switches personnel). Any other entity has the burden of creating the necessary infrastructure to reach low-density population areas and persons situated in remote and/or rugged terrain. The creation of such an infrastructure involves the investment of considerable time and money, and a high likelihood of delay before all persons seeking

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<sup>3</sup> *In re Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool; Implementation of Section 309(j) of the Communications Act — Competitive Bidding; Implementation of Sections 3(n) and 322 of the Communications Act, Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639(1995) ("Second Order & Seventh R&O"). See also, *In re Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5597-99 (1994) ("Fifth R&O").

<sup>4</sup> *Second Order & Seventh R&O*, at paras. 177-178. See also, *Fifth R&O*, 9 FCC Rcd at 5597.

delivery of the service can receive it.

Additionally, the Commission's current 900 MHz SMR partitioning rules obligate rural telephone companies to negotiate for partitioned areas that "includes the wireline service area of the rural telephone company " and ensure that the partitioned area "is reasonably related to the rural telephone company's wireline service area."<sup>5</sup> Under AMTA's proposal, partitioning would be required to be along geopolitical boundaries, but there is no obligation to provide service to any particular areas.<sup>6</sup> Entities other than rural telephone companies that must build an SMR system from scratch have no obligation to cover the population served by an incumbent rural telephone provider. Such entities might choose to delay building out an SMR system in that area, or even forego bringing service to the area altogether, should the service area of a rural telephone company be especially difficult to serve. Although SMR licensees are subject to buildout requirements, AMTA's lenient build-out proposals for partitioned licenses actually encourage the avoidance of speeding service to remote or hard-to-reach customers, because the mandatory two-thirds population coverage can be most easily met by serving the largest established communities within the partitioned service area.<sup>7</sup> Once such a requirement is met, the partitioned license holder need never provide service to more remote and less populated areas.

Rural telephone companies have a very close-knit relationship with the communities they serve. These small businesses depend on their customer bases for survival, and

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<sup>5</sup> 47 C.F.R. § 90.813(d).

<sup>6</sup> *AMTA Petition* pp. 4-5.

<sup>7</sup> *AMTA Petition* at pp. 6-7.

reciprocate by giving back to the community. Telephone company owners and managers reside within their service areas, send their children to local schools, and patronize local businesses. Rural telephone companies have worked hard to deploy fiber to their community schools and develop distance learning and other educational opportunities for their local schools -- a tremendous public service feat that "cream-skimming" entrepreneurs will not be incented to accomplish. In short, rural telephone companies have a loyalty and obligation to serve their rural communities -- other entities do not.<sup>8</sup> The Commission needs to understand that alternative providers are unlikely to have any educational or social investment in the service areas they might acquire through partitioning. Thus, the quality of service rural customers have come to expect from their rural telephone companies may be lessened.

Additionally, any current or future negotiations between rural telephone companies and SMR licensees may be halted or protracted so that SMR licensees can "shop" their partitioning agreements to the highest bidder. SMR licensees naturally will be more interested in receiving a premium for their MTA segments than they will be concerned about the type of service that will be provided once the license is partitioned. The search for the best offer will lead to delay in the ultimate delivery of SMR service to rural areas.

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<sup>8</sup> In its petition, AMTA states that expanding the partitioning right to all entities "would likely increase the availability of capital that could be used to construct and maintain 900 MHz systems and would promote more rapid implementation of 900 MHz SMR service to non-urban areas." AMTA Petition at p. 4. AMTA does not state that these entities will seek to provide service to remote and outlying rural areas. Of course, it is precisely the Commission's desire to ensure service to remote and outlying areas that caused it to adopt partitioning rules in the first place. The Commission should also recognize that non-rural telephone companies are not foreclosed from obtaining FCC authority to partition SMR licenses. To the extent that AMTA's members or other non-rural telephone companies are interested in partitioning, they can always seek a waiver of the FCC's rules.

**2. Eliminating rural telephone companies' exclusive right to receive partitioned MTA licenses significantly diminishes the only remaining benefit rural telephone companies receive**

Section 309(j)(3)(B) of the Communications Act calls for the Commission to promote economic opportunities for a variety of telecommunications providers, including rural telephone companies.<sup>9</sup> Of the types of entities named — small businesses, rural telephone companies, and minority- and female-owned businesses — rural telephone companies receive the least amount of assistance from the Commission with regard to the acquisition of licenses. Rural telephone companies are woefully mischaracterized as being financially superior to these other entities, and as a result are excluded from the various assistance schemes devised to enable undercapitalized companies to compete with larger, deep-pocketed companies.

In the rulemaking that adopted the current partitioning rules, rural telephone companies only received a right to partition a license amongst rural telephone company consortium members, or negotiate privately with auction winners to partition their licenses. The Commission excluded rural telephone companies from the bidding credits, tax certificates, and installment payment plans offered to small businesses, women and minorities, unless they fortuitously met the eligibility criteria for one of these designated entity categories.<sup>10</sup> This same exclusion from designated entity preferences occurred in the

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<sup>9</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>10</sup> See *Second Order & Seventh R&O*, at para. 154. (“We reject SCCC’s argument that we should use a small business threshold that is designed to include most rural telephone companies. By virtue of their existing infrastructure, rural telephone companies already have an edge over other new entrants. Therefore, we are not convinced that their ineligibility for

Broadband Personal Communications Services ("PCS") auctions, as well.<sup>11</sup>

The Commission has repeatedly stated that it believes restricting rural telephone companies to a single partitioning preference is sufficient to fulfill its own mandate under Section 309(j)(3)(B) of the Communications Act to ensure that rural telephone companies are afforded economic opportunities to participate in the provision of new and innovative services. Eliminating the exclusive right of telephone companies to negotiate for partitioned licenses revokes the one designated entity preference rural telephone companies enjoy, and adds yet another preference to the list of designated entity preferences offered to small businesses. Rural telephone companies were effectively shut out of the 900 MHz SMR auction due to the large geographic areas being auctioned and the exorbitant prices being paid for licenses. The large geographic areas used by the Commission to auction 900 MHz SMR spectrum made it financially impossible for rural telephone companies to try to acquire a license. Instead, rural telephone companies sat out the auction in reliance on their exclusive right to partition. Due to the inability to obtain SMR licenses at auction, the only way that rural telephone companies may provide their rural customers with SMR service is through partitioning. If AMTA's partitioning proposal is adopted, then the Commission will have, in effect, eliminated all preferences afforded rural telephone companies and bankrupted their opportunity, and right, to provide SMR service. In so doing, the Commission will fall short

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bidding credits, installment payments, and reduced down payments will hinder their entry into 900 MHz SMR services.") *Id.*

<sup>11</sup> *Fifth R&O* at 5599 ("We do not think that any other measures are necessary in order to satisfy the statute's directive that we ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy our goals to ensure that PCS is provided to all areas of the country including rural areas.").


of its obligations under Section 309(j)(3)(B) of the Communications Act.

## II. CONCLUSION

AMTA's partitioning proposal jeopardizes the ability of rural America to receive high-quality, innovative SMR services in a timely fashion. It also snaps the very thin string with which the Commission is tied to its obligations under the Communications Act of 1934 to ensure that rural telephone companies receive sufficient opportunities to participate in the provision of new and advanced telecommunications services. This proposal benefits very few, and disadvantages many. Thus, RTG respectfully requests that the Commission weigh the limited merits of AMTA's proposed partitioning plan and consequently reject it.

Respectfully submitted,

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